



California Fair Political Practices Commission

January 6, 1986

Michael J. Brodie
Assistant Chief Counsel
State Compensation Insurance Fund
P.O. Box 807
San Francisco, CA 94101

Re: Your Request for Advice,
Our File No. I-86-018

Dear Mr. Brodie:

You have written requesting that we informally review some changes that your agency is considering making in its Conflict of Interest Code. I will respond to each proposal in the order presented in your communication. Your communication is attached and incorporated by reference.

Amendment Number 1

Modification number 1 seems appropriate. Modification number 2 seems appropriate. Modification number 3 is questionable because the attorneys involved apparently are in a position to "participate in making" the decision regarding purchasing. (See, 2 Cal. Adm. Code Section 18700.) Perhaps you can provide us with a further clarification of the purchasing process and the attorneys' role in that process.

Amendment Number 2

This proposed modification seems appropriate.

Amendment Number 3

This proposed modification is inappropriate. The argument in support of this proposed modification totally misses the point of transactional disclosure. If employees are appropriately disqualifying themselves, and therefore not adjusting claims involving parties in which they have a financial interest, no reportable interests will appear on transactional disclosure statements.

Michael J. Brodie
January 6, 1986
Page 2

The transactional form of disclosure was assigned to claims adjusters in order to avoid possible over-reporting. The filing requirement for employees with nothing to disclose is de minimus and represents no intrusion on their privacy. The statement which they must sign under penalty of perjury ensures the enforceability of the conflict of interest laws.


Amendment Number 4

The words "of the type" are utilized on purpose and represent a very firm policy by the Commission which has been successfully litigated in court. The "of the type" language is necessary to ensure compliance with the requirements of the Political Reform Act.

Conclusion

Should you have further information which you wish to provide with respect to any of these proposals we will be available to review and comment on it.

Sincerely,


Robert E. Leidigh
Counsel
Legal Division

REL:nwm

**STATE
COMPENSATION
INSURANCE
FUND**

1275 MARKET STREET - SAN FRANCISCO, CALIFORNIA

F P P C
DEC 4 8 40 AM '85

IN REPLY REFER TO:

(415) 565-1248

December 2, 1985

Fair Political Practices Commission
P.O. Box 807
Sacramento, California 95804

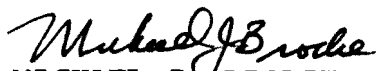
Attn: Robert E. Leidigh, Attorney

Dear Mr. Leidigh:

Enclosed are copies of proposed revisions to the State Compensation Insurance Fund's Conflict of Interest Code, together with an explanation as to the reasons for the proposed amendments. These proposed amendments have not been submitted to State Fund's Board of Directors as yet, nor have they been circulated to State Fund employees for comment. I would appreciate it if you would informally review these proposed amendments, and indicate what position you would recommend to the Commission with regard to them. I would also appreciate any comments you might make thereon that you deem to be appropriate. I realize that this sort of an opinion would not be binding, but this guidance would be of assistance in expediting the process of seeking amendments to State Fund's Conflict of Interest Code.

Thank you for your anticipated cooperation.

Sincerely,


MICHAEL J. BRODIE
Assistant Chief Counsel

MJB:kms
Enclosures

TITLE 2, SECTION 52400

(CONFLICT OF INTEREST CODE OF STATE COMPENSATION INSURANCE FUND)

Notice is hereby given that State Compensation Insurance Fund, pursuant to the authority vested in it by Division 2, Part 2, Chapter 4 of the Insurance Code, in order to implement the provisions of the Political Reform Act (Government Code Sections 81000 et. seq.), proposes to amend its Conflict of Interest Code (presently found at Section 52400 of Title 2 of the California Administrative Code) as described in the Informative Digest below.

Notice is also given that any person interested may present statements or arguments relevant to this proposed amended Conflict of Interest Code, in writing only, at the following location, on or before _____:

STATE COMPENSATION INSURANCE FUND

LEGAL DEPARTMENT

1275 Market Street, 3rd Floor

San Francisco, California 94103

Any interested person or his or her duly authorized representative may request in writing, no later than fifteen (15) days prior to the close of the written comment period, a public hearing pursuant to Section 11346.8 of the Government Code.

State Compensation Insurance Fund may, upon its own motion or at the —

request of any interested person, thereafter adopt the attached proposed amended Conflict of Interest Code substantially as set forth without further notice. Alternatively, State Compensation Insurance Fund may adopt the proposed amended Conflict of Interest Code with modifications, if the modifications are substantially related to the text made available to the public, so that the public was adequately placed on notice that the modifications could result from the proposed action. The text of any modification will be made available to the public at least fifteen (15) days prior to the date upon which the amended code is adopted.

INFORMATIVE DIGEST

State Compensation Insurance Fund has previously adopted a Conflict of Interest Code pursuant to the Political Reform Act (Government Code Sections 81000 et. seq.) and has completed the first filing of Statements of Economic Interests by its designated employees under that Conflict of Interest Code. Experience gained during the filing process has suggested the need for amendments to this Conflict of Interest Code, in order to make the provisions of this Conflict of Interest Code more consistent with the letter and spirit of the Political Reform Act and the regulations of the Fair Political Practices Commission. State Compensation Insurance Fund has prepared the following statement of reasons for the proposed amendments:

Modification of disclosure obligation of attorneys so that Assistant Chief Counsels must comply with Disclosure Categories 4 and 6, Attorneys-in-Charge must comply with Disclosure Categories 5 and 6, and other attorneys must comply with Disclosure Category 6. (The current requirements for attorneys are that Disclosure Categories 4 and 6 apply to all attorneys other than the Chief Counsel, and that these Disclosure Categories, among others, apply to the Chief Counsel.)

REASONS

1. The purchasing authority of the Assistant Chief Counsels is similar to that of the Chief Counsel, and therefore, the Assistant Chief Counsels are to remain subject to the same disclosure requirements regarding purchasing as the Chief Counsel.
2. Attorneys-in-Charge have purchasing responsibilities only for the District Legal Office of which they are in charge. Their purchasing authority is similar to that of a District Manager, who has purchasing authority for all of the non-legal operations in a District Office. Therefore, the disclosure requirements with regard to purchasing for Attorneys-in-Charge and District Managers should be the same.

3. All disclosure requirements regarding purchasing for attorneys below the level of the Attorney-in-Charge have been eliminated, because all purchases by Legal Department personnel require authorization by an Attorney-in-Charge and/or an Assistant Chief Counsel or the Chief Counsel. Therefore, no disclosures related to purchasing appear to be necessary for attorneys below the Attorney-in-Charge level.

PROPOSED AMENDMENT NUMBER 2

Elimination of any application of previous Disclosure Category 7 to Group Insurance Managers.

REASONS

This disclosure requirement was eliminated because Disclosure Category 7 relates to adjustment of claims, and Group Insurance Managers have no operating responsibilities with regard to the adjustment of claims. Inclusion of these managers in previous Disclosure Category 7 (which is proposed to be eliminated completely, in any event, for reasons stated below) was therefore inappropriate.

PROPOSED AMENDMENT NUMBER 3

Elimination of previous Disclosure Category 7 and of all disclosures called for by that disclosure category.

REASONS

Previous Disclosure Category 7 called for, in essence, the disclosure of investments in, income from, and positions held with business entities and persons whose claims had been adjusted by a given person during the reporting period in question. Experience gained during the first filing period for Statements of Economic Interests showed that these disclosures were unnecessary, and that as a result, a large population of employees (476) were required to fill out disclosure forms which reported virtually no reportable interests. The administrative effort necessary to secure this level of negative reporting is simply not justifiable, so that this filing requirement should be eliminated.

During the first filing period, 476 claims personnel (that is, those persons subject to previous Disclosure Category 7) filed disclosure statements, but only 3 of these disclosed any reportable interests. In all 3 instances, the reported disclosures related to investments in or income from various business entities, 2 of which were State Fund insureds and the third of which was the State Fund itself. None of these disclosures could possibly lead to the discovery of a potential conflict of interest. Certainly, the receipt of a salary (one of the three disclosures referred to above) from State Fund could not lead to

the discovery of any potential conflict of interest, nor could the receipt of loan funds or investment income from State Fund insureds lead to the discovery of any possible conflict of interest. Since claims payments by claims adjusters, are, by definition, made to persons other than the insured, the insured will not benefit financially from any payments which are made by a claims adjuster. Therefore, a claims adjuster could not, by making claims payments, cause a financial gain to any State Fund insured which might be involved in one of those claims and in which he might have an investment or from which he might receive income. The same is true with regard to injured employees, who are the major recipients of claims payments. Since injured employees must be private individuals who are employed by others, it is extremely unlikely that a claims adjuster would have an investment in, hold a business position with, or receive income from such a private individual. Therefore, it is extremely unlikely that the making of claims payments to such an individual could possibly bring about any financial benefit to a claims adjuster. The likelihood of such a financial benefit is so remote that it does not appear to be justifiable to require the level of disclosure referred to above.

The foregoing situation should be contrasted with the situation involving tax auditors for the Franchise Tax Board (the group which the Fair Political Practices

Commission felt to be comparable to State Compensation Insurance Fund's claims adjusters). These auditors review the records of taxpayers and determine the amount of taxes owed by the taxpayer. If the auditor has an investment in, holds a business position with, or receives income from a taxpayer, the auditor's decision on the amount of tax due would have a direct financial effect on the entity or person from which he receives income, in which he has an investment, or with which he holds a position; the potential for direct financial gain by the tax auditor in this situation is clear, and is to be contrasted with the position of the claims adjuster, where no such benefit can possibly arise.

For these reasons, it is proposed that previous Disclosure Category 7, and all disclosures thereunder, be eliminated.

PROPOSED AMENDMENT NUMBER 4

Elimination of the words "of the type" from Disclosure Categories 3, 4, and 5.

REASONS

Due to the diverse nature of the business of State Compensation Insurance Fund, it must, of necessity, purchase virtually all types of equipment, furniture, and supplies. As a result, the inclusion of the words "of the type" in the three disclosure categories

...to require, in effect, that all State Fund personnel who are subject to these disclosure categories disclose any investment in, income from, or position held with any business entity or financial institution of any type whatsoever in the State of California. One extreme example of the magnitude of disclosure called for by these categories is that one particular individual disclosed the entire customer list from a business with which he held a position; this list consisted of a large number of computer printout pages, which were, in the aggregate, in excess of one inch thick. A more narrow set of disclosure requirements which would eliminate such massive disclosures would appear to be appropriate, since disclosures of this magnitude serve no useful purpose; one could not possibly review a large number of disclosures of this magnitude in order to locate any actual or potential conflicts of interest. The elimination of the words "of the type" will call for only disclosures with regard to entities with which State Fund actually does business, and it is with such entities (not with other entities of that type with which the State Fund has not done business) that conflicts of interest will (if they exist at all) arise.